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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,611	04/09/2004	Mary Kay Bitton	212/555	1548
23371	7590	01/14/2005	EXAMINER	
CROCKETT & CROCKETT 24012 CALLE DE LA PLATA SUITE 400 LAGUNA HILLS, CA 92653			FRANCIS, FAYE	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/821,611	<b>Applicant(s)</b> BITTON, MARY KAY	
	<b>Examiner</b> Faye Francis	<b>Art Unit</b> 3728	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2004 and 09 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Applicant's election with traverse of group I in reply filed on 12/2/04 is acknowledged. The traversal is on the ground(s) that having a restriction requirement would create burden on the Applicant and ultimately on the Public by requiring prosecution on multiple patent applications, for the applicant, prosecution multiple patent applications will result in increased costs for prosecution fees for multiple applications and maintenance fees for multiple patents. These arguments are not found persuasive because election of species is not determinate upon a burden on the applicant but upon a burden on the Patent and Trademark Office. Since the examiner has determined that such a burden exists, the requirement is still deemed proper and is therefore made FINAL. Claims 8 and 16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Claims 1-7 and 9-15 are examined herein.

### ***Information Disclosure Statement***

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

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***Specification***

3. The disclosure is objected to because of the following informalities: on page 2 lines 12 and 14 and page 4 lines 25 and 26, it appears that phrase " the container of the cap" should be replaced with -- the cap of the container --.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

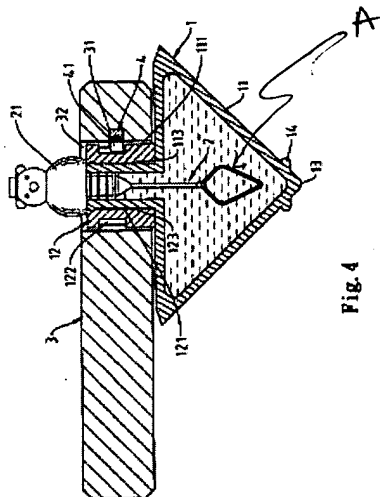
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-5, 7, 9-13 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Lin [6,743,070].

Lin discloses in Figs 3-5 (also see Figure below wherein the letter A has been added by the examiner), a toy suitable for forming bubbles comprising: a container [hollow vessel 11 and top sleeve 12] having an opening [aperture 121], a container cap [figure 21] releasably attached to the opening, a shaft [fluid tube 2] connected to a bubble wand assembly [figure 21, fluid tube 2 and A] comprising a bubble forming attachment A and a means [LED 62] for illuminating the bubble wand assembly as recited in claims 1 and 9. Also, Lin discloses, the means for illuminating the bubble

wand assembly comprises a switch LED [col 2 lines 32-35] as recited in claims 2 and 10, the means for illuminating the bubble wand assembly comprises a battery 61 activated LED as recited in claims 3 and 11, the means for illuminating the bubble wand assembly comprises a mechanically activated LED [by way of applying force by pulling rod 4 to create rotation in the top resulting a centrifugal force to causing the wire 621 to contact the battery in order for the LED 62 to emit light] as recited in claims 5 and 13. Additionally, Lin discloses the means for illuminating the bubble wand assembly comprises a rotatably/ motion activated LED as recited in claims 4, 7, 12 and 15 [col 2 lines 32-35].



6. Claims 1 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Lin [6,746,296], hereinafter Lin' 296.

Lin' 296 discloses in Figs 1-6, a toy suitable for forming bubbles [bubble blower 1] comprising: a container 11 having an opening [bottleneck 111], a container cap [handle 131] releasably attached to the opening, a shaft [applicator 13] connected to a bubble wand assembly [handle 131, applicator 13, container 11 and penholder 2]

comprising a bubble forming attachment [the bottom end of applicator 13 opposite to the handle 131 which is not shown] and a means [light-emitting device 3] for illuminating the bubble wand assembly as recited in claims 1 and 9.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by McDonald et al., hereinafter McDonald [5,478,267].

McDonald discloses in Fig 1, a toy suitable for forming bubbles [bubble wand 10] comprising: a bubble wand assembly [ring 18, handle 12, elongated portion 14 and soap bubble sensor 16] comprising a shaft [handle 12] connected to a bubble forming attachment [ring 18] and a means for illuminating the bubble wand assembly [col 5 lines 39-41].

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 5-6, 10 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin' 296 in view of Kuo [6,623,136].

Lin' 296 discloses most of the elements of these claims as stated above including a mechanically activated light-emitting device [col 2 lines 53-58].

Lin' 296 may not disclose a switch LED as recited in claims 2 and 10, the means for illuminating the bubble wand assembly comprises a mechanically activated LED as recited in claims 5 and 13 and a twistably activated LED as recited in claims 6 and 14.

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Kuo teaches the concept of providing a lighted pen with a mechanically activated twist switch/ motion activated LED [col 1 line 36] and an LED 4. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Lin' 296 with the twistably activated switch for the LED to emit the light as taught by Kuo since such a modification would have increased the longevity of the switching mechanism. Additionally, it would have been obvious to substitute an LED for the light source in the system of Lin' 296. One would have been motivated since LEDs are recognized in the illumination art to have many desirable advantages, including reduced size, high efficiency, low power consumption, long life, resistance to vibrations, and low heat production, over other light sources. Furthermore, page 3, lines 25-31 of Applicant's specification states that these types of illumination devices/methods are standard in the art.

### ***Conclusion***

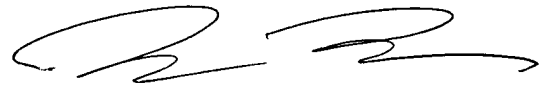
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 571-272-4423. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FF



Faye Francis